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Attorneys for Defendants
Facebook, Inc., Mark Zuckerberg, Christopher Cox, Javier
Olivan, Samuel Lessin, Michael Vernal, and Ilya Sukhar

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

SIX4THREE, LLC, a Delaware limited liability
company,

Plaintiff,

v.

FACEBOOK, INC., a Delaware corporation;
MARK ZUCKERBERG, an individual;
CHRISTOPHER COX, an individual;
JAVIER OLIVAN, an individual;
SAMUEL LESSIN, an individual;
MICHAEL VERNAL, an individual;
ILYA SUKHAR, an individual; and
DOES 1-50, inclusive,

Defendants.

Case No. CIV 533328

**Assigned for all purposes to Hon. V. Ray
Swope, Dept. 23**

**DECLARATION OF LAURA E. MILLER IN
SUPPORT OF DEFENDANT FACEBOOK,
INC.'S BRIEF RE: COURT'S ORDER DATED
NOVEMBER 20, 2018**

Dept: 23 (Complex Civil Litigation)
Judge: Honorable V. Raymond Swope

FILING DATE: April 10, 2015
TRIAL DATE: April 25, 2019

1 I, Laura E. Miller, hereby declare as follows:

2 1. I am an attorney at law licensed to practice in the State of California. I am counsel of
3 record in this matter for Defendant Facebook, Inc. ("Facebook"). I make this Declaration from personal
4 knowledge, and if called to testify, I could and would testify competently thereto.

5 2. Attached hereto **Exhibit 1** is a true and correct copy of the Declaration of Richard
6 Gordon, Queen's Counsel, executed on November 28, 2018.

7 3. Attached hereto **Exhibit 2** is a true and correct copy of a letter from the Speaker's
8 Counsel of the House of Commons to David Godkin dated November 23, 2018.

9 4. Attached hereto **Exhibit 3** is a true and correct copy of a letter from Damian Collins MP
10 to Theodore Kramer dated November 6, 2018.

11 5. Attached hereto **Exhibit 4** is a true and correct copy of a letter from Charles Brasted of
12 Hogan Lovells International LLP to the Speaker's Counsel of the House of Commons dated November
13 27, 2018.

14 6. Attached hereto **Exhibit 5** is a true and correct copy of a letter from Damian Collins MP
15 to Theodore Kramer dated November 21, 2018.

16 7. Attached hereto **Exhibit 6** is a true and correct copy of the Order on Six4Three's Motion
17 for Protective Order and Facebook's Motion for Protective Order in this matter, issued on October 25,
18 2016.

19 8. Attached hereto **Exhibit 7** is a true and correct copy of a letter from David Godkin to
20 Damian Collins MP dated November 19, 2018.

21 9. Attached hereto **Exhibit 8** is a true and correct copy of a letter from David Godkin to
22 Damian Collins MP dated November 21, 2018.

23 I declare under the penalty of perjury under the laws of the State of California that the foregoing
24 is true and correct. Executed on this 28th day of November, 2018

25
26 
27 LAURA E. MILLER
28

1 **PROOF OF SERVICE**

2 I am a citizen of the United States and resident of the State of California. I am employed in San
3 Francisco County, State of California, in the office of a member of the bar of this Court, at whose
4 direction the service was made. I am over the age of eighteen years, and not a party to the within action.
5 My business address is 217 Leidesdorff Street, San Francisco, CA 94111.

6 On November 28, 2018, I served the following documents in the manner described below:

7 **DECLARATION OF LAURA E. MILLER IN SUPPORT OF DEFENDANT**
8 **FACEBOOK, INC.'S BRIEF RE: COURT'S ORDER DATED NOVEMBER 20, 2018**



10 BY ELECTRONIC SERVICE: By electronically mailing a true and correct copy through
Durie Tangri's electronic mail system from cortega@durietangri.com to the email
addresses set forth below.

11 On the following part(ies) in this action:

12 Stuart G. Gross
13 GROSS & KLEIN LLP
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14 Telephone: 415-671-4628
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16 David S. Godkin
17 James Kruzer
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280 Summer Street
18 Boston, MA 02210
Telephone: 617-307-6100
19 godkin@birnbaumgodkin.com
kruzer@birnbaumgodkin.com

20 *Attorneys for Plaintiff*
21 *Six4Three, LLC*

22 I declare under penalty of perjury under the laws of the United States of America that the
23 foregoing is true and correct. Executed on November 28, 2018, at San Francisco, California.

24 
25 _____
Christina Ortega

EXHIBIT 1

DURIE TANGRI LLP
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Attorneys for Defendants
Facebook, Inc., Mark Zuckerberg, Christopher Cox, Javier
Olivan, Samuel Lessin, Michael Vernal, and Ilya Sukhar

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

SIX4THREE, LLC, a Delaware limited liability
company,

Plaintiff,

v.

FACEBOOK, INC., a Delaware corporation;
MARK ZUCKERBERG, an individual;
CHRISTOPHER COX, an individual;
JAVIER OLIVAN, an individual;
SAMUEL LESSIN, an individual;
MICHAEL VERNAL, an individual;
ILYA SUKHAR, an individual; and
DOES 1-50, inclusive,

Defendants.

Case No. CIV 533328

**Assigned for all purposes to Hon. V. Raymond
Swope, Dept. 23**

**DECLARATION OF RICHARD GORDON,
QUEEN'S COUNSEL**

Dept: 23 (Complex Civil Litigation)
Judge: Honorable V. Raymond Swope

FILING DATE: April 10, 2015
TRIAL DATE: April 25, 2019

1 I, Richard Gordon, hereby declare as follow:

2 **I. QUALIFICATIONS**

- 3 1. I am a practising barrister (Queen’s Counsel) with a specialist practice in constitutional and
4 administrative law. I practise from Brick Court Chambers which is a well-known constitutional
5 and administrative law, commercial law and European Union law set of Chambers in the United
6 Kingdom. I have appeared in numerous constitutional cases both in the United Kingdom and in
7 foreign jurisdictions.
- 8 2. I am also a Visiting Professor in the Faculty of Law at University College London and a member
9 of the Advisory Board of the Constitution Society UK (‘the CS’). I frequently give evidence to
10 parliamentary select committees (most recently to the House of Lords Constitution Committee
11 alongside the former President of the Supreme Court Lord Neuberger on the EU (Withdrawal)
12 Bill). I was appointed as a special adviser to the Public Administration Select Committee on its
13 recent inquiry into civil service impartiality. I have written and co-authored many works on UK
14 constitutional and administrative law including, most relevantly, a paper in 2012 for the CS
entitled *Select Committees and Coercive Powers*.

15 **II. INTRODUCTION**

- 16 3. In this Report I address the following topics:
- 17 a. The essential nature of select committee powers and, in the light of that, whether the
18 United Kingdom courts could enforce a Select Committee’s order for production of
documents (‘Issue 1’).
- 19 b. The legal effect in English law of the order for production of documents made by the
20 Committee for Digital, Culture, Media and Sport (‘the Committee’), a select committee of
21 the United Kingdom House of Commons (‘Issue 2’).
- 22 c. The procedures for a person visiting the United Kingdom to respond or to object to the
23 Committee’s order (‘Issue 3’).
- 24 d. The procedures available to the Committee for non-compliance with the Committee’s
25 order (‘Issue 4’).
- 26 e. Whether Facebook is subject to the jurisdiction of the Committee given that it has offices
27 in the UK and is a legal entity in the UK (‘Issue 5’).
- 28

4. I have read the content of a letter dated 23rd November 2018 addressed to Birmbaum Godkin LLP from the Speaker's Counsel ('the SC letter') which I infer will be before the Court. I will make reference to that letter where appropriate.

III. ISSUE 1: ESSENTIAL NATURE OF SELECT COMMITTEE POWERS

5. There is a fundamental distinction between (i) the ~~law, decided~~ and enforced by the United Kingdom courts (derived almost exclusively from statute, the common law and equity) and (ii) ~~the powers of a parliamentary select committee~~ of the House of Commons (derived from internal parliamentary standing orders and Resolutions of parliament).
6. The courts of the United Kingdom cannot inquire into what is said or done before, or by, a select committee. This follows from parliamentary privilege (the most important aspect of which is freedom of speech within parliament) and the wider principle of exclusive cognizance which protects how parliament arranges its internal affairs from interference by the courts.
7. Article 9 of the Bill of Rights 1689 provides, materially, as follows:

'That the Freedome of Speech and Debates or Proceedings in Parlyament ought not to be impeached or questioned in any Court or Place out of Parlyament.'

8. It is well established that select committee proceedings rank as proceedings *'in Parliament'*.¹ Moreover, Article 9 is part of a separate and wider principle of the United Kingdom's constitutional separation of powers.
9. There are many statements in the case-law. For example, in *Bradlaugh v. Gossett* (1884) 12 QBD 271 at 275 Lord Coleridge CJ observed that:

'What is said or done within the walls of Parliament cannot be inquired into in a court of law.'

10. The wider principle is exemplified by Lord Browne-Wilkinson's speech in *Prebble v. Television New Zealand Ltd* [1995] 1 AC 321 at 332C:

'In addition to article 9 itself, there is a long line of authority which supports a wider principle, of which article 9 is merely one manifestation, viz that the courts and parliament are both astute to recognise their respective constitutional roles.'

11. As part of their respective constitutional roles:

'Exclusive cognisance is the right of each House of Parliament to regulate its own proceedings and internal affairs without interference by any outside body. This includes the conduct of its Members, and of other participants such as witnesses before select

¹ Paragraph 252 of the First Report of Session 1998-1999 of the Joint Committee on Parliamentary Privilege.

committees'.²

12. What this means is that select committee proceedings operate entirely separately from the United Kingdom legal system. It follows from this that a select committee order for the production of documents could not (and would not be sought to) be enforced by the Committee through a court of law in the United Kingdom.

13. In short, there is no process recognised in the law of the United Kingdom for enforcing the order of a select committee. As explained below, select committees may seek to enforce their orders against the person or body to whom the order is addressed by raising the issue of non-compliance as an alleged contempt of parliament. At the present time the scope of this process is uncertain and its effectiveness limited. There have been suggestions – not pursued to date – that the enforcement powers of select committees might be strengthened, although there are also concerns about doing so.

14. By the same token, if confidential documents should – either inadvertently or deliberately – be disclosed to a select committee, the respective doctrines of parliamentary privilege and exclusive cognisance place no legal constraints upon the use that a committee might make of such documents including the making public of such documents.³ The United Kingdom courts will not intervene to restrain such use and, therefore, the consequences of disclosure may be irreparable.

15. Finally, the scope of parliamentary privilege is confined to ‘proceedings in parliament’. It does not extend to information used outside such proceedings even if that information was obtained during the course of such proceedings. As such, were a Member of the Committee or other person who has had sight of such documents by reason of the disclosure to the Committee to use or disclose them outside parliament and without the authority of the Committee, then that person could be susceptible to legal sanction.

² Paragraph 8 of the Executive Summary of *Parliamentary Privilege* (April 2012, Cm 8318).

³ There is, nonetheless, a self-denying ordinance of 15 November 2001, which is expressed to apply equally to committees of the House of Commons, not to refer to, or raise in any motion, debate or question, cases in which legal proceedings are active in the United Kingdom. By analogy similar principles might be thought to apply to legal proceedings that are active in the courts of the United States.

1 **IV. ISSUE 2: LEGAL EFFECT OF THE COMMITTEE’S ORDER FOR PRODUCTION OF**
2 **DOCUMENTS**

3 16. It follows from the answer to Issue 1 that as a matter of law as administered by the United
4 Kingdom courts (as distinct from the internal regulation of its own proceedings by parliament) the
5 Committee’s order is devoid of legal effect.

6 17. However, this does not mean that the Committee’s order has, at least in theory, no possible
7 adverse consequential effect. This is addressed in Issues 3 and 4 (below) and forms part of the
8 internal procedures adopted by parliament for the purpose of regulating its affairs.

9 **V. ISSUE 3: PROCEDURES FOR PERSONS VISITING THE UNITED KINGDOM TO**
10 **OBJECT OR RESPOND TO THE COMMITTEE’S ORDER**

11 18. As foreshadowed above, the powers of select committees of the House of Commons are laid
12 down by standing orders. The latest version (May 2018) of the standing orders makes no express
13 provision for a person affected by an order of a select committee to respond or to object to such
14 order.

15 19. Issue 4 below addresses the procedures available to the Committee for non-compliance with its
16 order. In practice, in modern times, it is inconceivable that a person made subject to an order and
17 an investigation into whether there was a contempt of parliament would not be permitted to
18 respond to the Committee’s order and to make objection to it prior to the full House of Commons
19 making any finding of contempt. Indeed, as part of any proper investigation the Committee
20 would, in practice, have to give the affected person the opportunity to explain his or her non-
21 compliance before making a special report to the House of Commons. In any event, the
22 Committee of Privileges if and when the matter was referred to it would be required to afford
23 such opportunity. Erskine May’s Parliamentary Practice 24 ed (2011) (‘Erskine May’) ~~understates~~
24 the position by observing that the former practice of sometimes punishing offenders for an
25 obvious contempt without hearing them ‘*is unlikely to be followed any longer.*’

26 20. Although, as set out correctly in the SC letter, there is no formal procedure laid down in standing
27 orders for responding, or objecting, to the order of a select committee, the former Committee on
28 Standards and Privileges (now the Committee of Privileges) would, it is now clear, before making
any recommendation to the full House of Commons as to the existence of contempt and penalty
afford the affected party the full opportunity of being heard.

1 21. This is because the Committee of Privileges set out in its minutes for 3rd July 2012 the procedure
2 that it would expect to follow in the particular reference made to it. It is reasonable to suppose
3 that this procedure would be, and is expected to be, followed more widely.

4 22. The relevant extract from these minutes are appended to this Report but the key elements are as
5 set out below. In terms of process and prior to the Committee of Privileges reporting a finding of
6 contempt and suggested penalty to the full House of Commons:

- 7 (i) Written evidence would be sought from the recipient of the complaint.
- 8 (ii) There would also be the opportunity to give oral evidence accompanied if requested by a
9 legal adviser.
- 10 (iii) Final submissions would be invited.
- 11 (iv) If it was intended to criticise the subject of the inquiry a warning letter would be sent.

12 23. It follows that the compulsory power of seizure of documents by the Serjeant at Arms that I
13 understand to have been exercised by the Committee before there was any finding (or even
14 complaint) of contempt fell outside the scope of the above procedures.⁴ I have read a further
15 letter from the Speaker's Counsel dated 27 November 2018 addressed to Hogan Lovells
16 International LLP (solicitors acting for Facebook in the United Kingdom) which appears to draw
17 a parallel between the fact of the commission of a crime with the fact of commission of a
18 contempt of parliament. However, in both cases, it is (respectively) the verdict of a criminal court
19 or the finding of a contempt of parliament by the full House of Commons that determines whether
20 (as the case may be) a crime or a contempt of parliament has occurred. In the present case there
21 has, as the letter makes clear, been no finding of contempt of parliament. Nor does it follow that
22 because non-compliance with the order of a select committee may constitute a contempt of
23 parliament, the fact of non-compliance with such order amounts to a contempt of parliament. I
24 should add that parliament has no authority, enforceable in the United Kingdom courts, to detain
25 a foreign national who has not been charged, still less convicted, of a criminal offence. Nor is
26 there any precedent for the purported exercise of such a power.

27 24. There is a material relationship between Issue 3 and Issue 4 to which I now turn.

28 ⁴ See report in the Guardian 24 November 2018 'Parliament seizes cache of internal Facebook papers.'

VI. ISSUE 4: PROCEDURES AVAILABLE TO THE COMMITTEE FOR NON-COMPLIANCE WITH ITS ORDER

25. Non-compliance with a select committee's order for production of documents is capable of amounting to a contempt of parliament.⁵ The established process prior to the enforcement of an order of a select committee of the House of Commons is as follows.

- a. The select committee must first make a special report to the House of Commons.⁶
- b. The House as a whole then debates whether to refer the matter to the Committee of Privileges.
- c. It is for the Committee of Privileges to decide whether or not to recommend to the full House of Commons that a contempt of parliament has been established and the suggested penalty (if any). As the Joint Committee on Parliamentary Privilege argued in its Report in July 2013, this is a safeguard to ensure that complaints of contempt are considered fairly.
- d. The full House of Commons must then decide whether to accept the recommendation of the Committee of Privileges and find a contempt and, if so, to decide on the appropriate penalty.

26. The constituent elements of contempt of parliament have not been systematically defined.

Although the SC letter correctly cites Erskine May (at page 839) as listing disobedience to an order of a committee as a contempt of the House, that presents an incomplete picture in that it implicitly suggests that ~~any~~ failure to comply with an order for production of documents amounts automatically to contempt of parliament. This is very far from being the case.

27. The most recent and authoritative exposition is that set out in the Resolution of the House of Commons on 6 February 1978 (see Erskine May at page 218),⁷ namely that the House has decided that:

'... its penal jurisdiction should be exercised (a) as sparingly as possible, and (b) only when the House is satisfied that to exercise it is essential in order to provide reasonable protection for the House, its Members or its officers, from such ~~improper~~ obstruction as is causing, or is likely to cause, substantial interference with the performance of their respective functions.' (underlining added).

⁵ The SC letter correctly states that the Committee's letter differs from a summons in that it is not issued by a court. Nonetheless, normally a letter is followed by a committee 'summons'. The difference is probably semantic, however, given that an order is claimed to have been published.

⁶ See, generally, Erskine May at pp. 278-279.

⁷ It is also recorded in the Minutes appended to this Report.

28. The use of the word ‘improper’ is incompatible with the existence of a reasonable excuse for non-compliance. Moreover, the presence of a reasonable excuse as permitting non-compliance with an order made by a select committee for production of documents was expressly envisaged in the 2012 Government Green Paper (CM 8318) on Parliamentary Privilege (at paragraph 160) and in the 1999 Joint Committee Report on Parliamentary Privilege (at paragraph 264).⁸

29. The Green Paper (at paragraph 160) gives an illustration of this:

‘... While it would be up to the House to determine what constitutes a reasonable excuse, the risk of self-incrimination might be one, limiting the degree of compulsion required...’.

30. In terms of penalty, in theory the House has power to fine, to imprison or to admonish for an established contempt. However, the last fine was imposed in 1666. The last imprisonment for contempt of a non-member was in 1880.⁹ The Standards and Privileges Committee in its 14th Report of Session 2010-2011 Privileges: Hacking of Members’ Mobile Phones doubted whether these latter powers (fining or imprisoning) still existed (see paragraph 59). As mentioned earlier, there have, over the years, been proposals to strengthen the enforcement powers of select committees but no reforms have yet been implemented or even unequivocally suggested.¹⁰

31. One of the concerns in strengthening (or even now exercising) the powers of select committees has been an awareness of the importance attached to the protection of fundamental rights and a consequent fear of a successful legal challenge. As the Joint Committee on Parliamentary Privilege recognised in its 2013 report (see paragraph 51) *‘[w]hile domestic courts may be unable to consider proceedings in Parliament, the European Court of Human Rights has asserted its jurisdiction, relying on Article 6 of the European Convention on Human Rights which provides for the right to a fair trial “by an independent and impartial tribunal”’.*

VII. ISSUE 5: WHETHER FACEBOOK IS SUBJECT TO THE COMMITTEE’S JURISDICTION

32. A select committee’s power to make an order for production of documents within its jurisdiction provided that such documents are relevant to the Committee’s work as defined by its terms of reference is, in principle, unconstrained by the House’s relevant standing order 152(4) which

⁸ Parliamentary Privilege First Report Session 1998-99.

⁹ See *Disciplinary and Penal Powers of the House* Fact Sheet G6 General Series of the House of Commons Information Office (September 2010) at page 6.

¹⁰ See, most recently, Joint Committee Report on Parliamentary Privilege, Report of Session 2013-2014 (18 June 2013) at paragraphs 57-100.

1 enables the Committee '*to send for persons, papers and records.*' This is confirmed by Erskine
2 May (at page 819).

- 3 33. As a legal entity within the United Kingdom Facebook is, therefore, potentially subject to the
4 Committee's jurisdiction and to the processes, including the limitations on those processes, set
5 earlier out in this Report. Only legal and natural persons that reside or who are present in the
6 United Kingdom are within the jurisdiction of the United Kingdom parliament. This would
7 include Facebook's United Kingdom entities. Facebook Inc which is the party to the Californian
8 proceedings and, as I understand the position, the relevant entity to whom the documents belong,
9 is not present in the United Kingdom and is not, therefore, subject to the jurisdiction of the United
10 Kingdom parliament.
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1 I declare under the penalty of perjury under the laws of the State of California that the foregoing
2 is true and correct. Executed on this 28th day of November, 2018
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EXHIBIT 2

HOUSE OF COMMONS

David S. Godkin, Esq.
Birmbaum Godkin LLP
280 Summer Street
Boston
MA 02210
United States of America

B – email onl

23 November 2018

Dear Mr Godkin

RE: Orders for documents served by the Digital, Culture, Media and Sport Committee of the House of Commons on 19 and 21 November 2018

We have been instructed to respond to your letter of 21 November 2018 to Damian Collins MP, Chair of the Digital, Culture, Media and Sport Committee, which raises a number of questions of United Kingdom law and Parliamentary procedure. We regret that we are unable to brief the court directly; it would be improper for us to do so as we have no standing in the case and the House of Commons is not within the jurisdiction of the court. However, we address your questions below, in the hope that this letter will be of assistance in preparing Six4Three's brief. We do not address those matters that are clearly questions of US law, or which are matters of fact.

uthori – does DCMS have to overrule the Court' – orders without first seeki relief from the court?

DCMS is a select committee of the House of Commons, the elected House of the United Kingdom Parliament. The House of Commons has unfettered powers to call for "persons, papers and records" to enable it effectively to exercise its core functions of scrutiny and debate. By the Standing Orders of the House of Commons, that power to call for persons, papers and records is delegated to a number of Select Committees, including the DCMS Committee. *Erskine May*¹ says (p.819), "There is no restriction on the power of committees to require the production of papers by private

¹ Erskine May's Treatise on the Law, Privilege, Proceedings and Usage of Parliament. References are to the 24th edition (2011), ed. Sir Malcolm Jack KCB PhD.

House of Commons Richmond House London SW1A 0AA

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bodies or individuals, provided that such papers are relevant to the committee's work as defined by its order of reference. [A copy of the terms of reference of the "Fake News" inquiry is annexed to this letter.] Select committees have formally ordered papers to be produced by the chairman of a nationalized industry and a private society. Solicitors have been ordered to produce papers relating to a client."

The Committee made an order within Parliament's own jurisdiction, at a time when Mr Kramer was present within the jurisdiction, for the production of papers that were present in the jurisdiction. It would have been wholly inappropriate for it to make prior application to a court in California, which does not exercise authority over Parliament's exercise of its functions in the United Kingdom.

By self-denying ordinance (the *sub judice* resolution made in 2001 and annexed to its Standing Orders) the House of Commons and its committees do not in general make reference to proceedings that are active in UK courts, but there is nothing as a matter of law to prevent them from doing so, and there is no equivalent resolution or requirement in relation to proceedings of courts outside the United Kingdom.

What is the legal effect, under United Kingdom law, of the DCMS letter to Mr Kramer?

The order contained in the letter to Mr Kramer dated 19 November 2019 imposes an obligation on Mr Kramer to produce the documents referred to in the order. Mr Kramer had previously been asked to provide the material voluntarily, and had refused to do so by reason of the order of the Court in California. Failure to comply with the order of the Committee would have been capable of constituting a contempt of Parliament (as to which, see below).

By virtue of Article IX of the Bill of Rights 1689, which states (in modern spelling) that "freedom of speech in debate and proceedings in Parliament ought not to be impeached or questioned in any court or place outside Parliament", the courts in the United Kingdom have not been able to consider the legal effect of an order by either House of Parliament, and therefore there is no case law on this issue.

Is the DCMS letter different from a summons?

It has an effect similar to that of a summons, but is not a summons as it is not issued by a court but by Parliament. The Committee also has the power to require the attendance of witnesses, in the exercise of its power to call for "persons, papers and records", and sometimes the exercise of that power to require the attendance of a witness in person is referred to as a summons. The Committee did not require the personal attendance of Mr Kramer in this case.

What are the procedures for Mr Kramer to respond or object to the DCMS letter demand?

There is no procedure for an appeal against an order of a committee, or to enable a person who receives an order to respond to it. Once made, it must be complied with. Mr Kramer was placed in a position where he was required to obey the order or risk being found in contempt of Parliament.

What are the contempt procedures for DCMS for non-compliance by Mr Kramer?

If Mr Kramer had failed to produce the documents after being ordered to do so by the Committee, the Committee would have reported that failure to the House of Commons as a matter of potential contempt of Parliament. "Contempt" is not anywhere defined, but *Erskine May* says (p.837), "Acts or omissions which obstruct or impede the work of a committee or any of its members or officers, or which tend, directly or indirectly, to produce such results, may be treated as a contempt of the House and investigated and punished, as appropriate". May lists disobedience to an order of a committee as a contempt of the House (p.839).

The House would then have considered a motion to refer Mr Kramer's case to the Committee of Privileges. If the motion were passed the Committee of Privileges would have considered the matter and would, if it considered it appropriate, have proposed a sanction on Mr Kramer for his contempt. The powers of the House of Commons to punish for contempt are not defined by statute, and have in the past included imprisonment, fines and admonishment either at the bar of the House or in absentia. In modern times the powers have been exercised sparingly.

Yours faithfully

' *Counsel*

Speaker's Counsel

Annex

Terms of reference of the DCMS Committee inquiry into 'fake news'

The Culture, Media and Sport Committee [since 2017, the Digital, Culture, Media and Sport Committee] are looking at ways to respond to the phenomenon of fake news, focusing in particular on the following questions:

- What is 'fake news'? Where does biased but legitimate commentary shade into propaganda and lies?
- What impact has fake news on public understanding of the world, and also on the public response to traditional journalism? If all views are equally valid, does objectivity and balance lose all value?
Is there any difference in the way people of different ages, social backgrounds, genders etc use and respond to fake news?
Have changes in the selling and placing of advertising encouraged the growth of fake news, for example by making it profitable to use fake news to attract more hits to websites, and thus more income from advertisers?
What responsibilities do search engines and social media platforms have, particularly those which are accessible to young people? Is it viable to use computer-generated algorithms to root out 'fake news' from genuine reporting?
How can we educate people in how to assess and use different sources of news?
Are there differences between the UK and other countries in the degree to which people accept 'fake news', given our tradition of public service broadcasting and newspaper readership?
How have other governments responded to fake news?

EXHIBIT 3



Digital, Culture, Media and Sport Committee

House of Commons, London SW1A 0AA

Tel 020 7219 6120 Email cmscom@parliament.uk Website www.parliament.uk/cms

Mr Theodore Kramer
1267 Chestnut St.,
Apt 6, San Francisco,
California 94109
USA

6 November 2018

Dear Mr Kramer

The UK House of Commons Digital, Culture, Media and Sport Committee, of which I am Chair, would like to request several documents that we believe to be in your possession. They relate to the matter of Six4Three, LLC v. Facebook, Inc., filed on April 10, 2015 in California Superior Court, County of San Mateo (CIV533328). The following categories of documents have been deemed highly relevant to ongoing Committee investigations:

- Unredacted copy of Plaintiff Six4Three's Corrected Memorandum of Points and Authorities in Opposition to Defendants' Special Motions to Strike (Anti-SLAPP) filed on May 18, 2018;
- Unredacted copy of the Declaration of David S. Godkin in Support of Six4Three's Anti-SLAPP Opposition ("Godkin Anti-SLAPP Declaration") filed concurrently therewith on May 18, 2018;
- Exhibits 1-212 to the Godkin Anti-SLAPP Declaration filed on May 18, 2018;
- All documents containing summaries or analyses of any of the exhibits to the Godkin Anti-SLAPP Declaration filed on May 18, 2018.

I should highlight that, if any disclosure of this material to the Committee has consequences in the US courts, the Committee cannot protect you. Committee proceedings are subject to parliamentary privilege in the United Kingdom under Article IX of the 1689 Bill of Rights, but this legislation does not have extraterritorial effect and could not be expected to be upheld in a US court.

Yours sincerely,

Damian Collins MP
Chair, Digital, Culture, Media and Sport Committee

EXHIBIT 4

27 November 2018

By email and postSpeaker's Counsel
House of Commons
Richmond House
London SW1A 0AA

Charles Brasted

Partner

charles.brasted@hoganlovells.com
D +44 20 7296 5025Our ref C6/CRNB/9068733
Matter ref 160636/000005

Dear Sirs

DCMS COMMITTEE ORDER TO PRODUCE CONFIDENTIAL INFORMATION – THEODORE KRAMER

We are instructed by Facebook, Inc. ("**Facebook**"). We refer to your letter of 23 November 2018, addressed to Mr Godkin, the US attorney for Mr Theodore Kramer, principal of SIX4THREE, LLC ("**Six4Three**").

Background

As you are aware, the Digital, Culture, Media and Sport Committee (the "**DCMS Committee**") made an order on 19 November 2018 calling for Mr Kramer, a US citizen temporarily present in the United Kingdom, to produce to the DCMS Committee documents (the "**Sealed Documents**") belonging to Facebook. These were disclosed by Facebook in proceedings before the California Superior Court and were sealed as confidential by that Court in accordance with a Protective Order made by it.

You will also be aware that the California Superior Court issued an Order on 20 November 2018 restraining the transmission, release or submission by Mr Kramer or Six4Three of the Sealed Documents pending further direction of the Court. The Order also directed the parties to file briefs addressing various matters, including matters of Parliamentary procedure and jurisdiction.

We understand that Mr Godkin directed these questions the DCMS Committee, which resulted in your instruction to write the letter referred to above.

Clarifications Sought

In accordance with due process under the Protective Order, and further to the Order of 20 November 2018, Mr Kramer yesterday served on Facebook and the California Superior Court evidence setting out the circumstances in which he came to disclose the Sealed Documents to Mr Collins, the Chair of the DCMS Committee, in (what he admits to be) breach of the Orders of the California Superior Court. He also enclosed a copy of your letter.

We write to seek clarification of matters arising from Mr Kramer's evidence and the information provided by Speaker's Counsel to the California Superior Court (via Mr Kramer).

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In short, Mr Kramer's evidence, as reflected in the brief filed with the California Superior Court, is that:

- he was fully aware that any disclosure to the DCMS Committee at the time would be in breach of Orders made by the California Supreme Court;
- the actions of the DCMS Committee and the Serjeant at Arms left him fearful for his reputation and his liberty; and
- he handed over the Sealed Documents after "*Mr. Collins and his staff kept [him in Mr Collins' office] for two hours, without representation, explaining in significant detail the procedures of the investigation into Mr. Kramer and the penalties associated with his continued non-compliance*" and after being told by Mr Collins and his staff that "*he was now in contempt of Parliament*".

We are not in a position to comment on the veracity of the claims made by Mr Kramer regarding the conduct of Mr Collins, the Serjeant at Arms and others, but we are immediately concerned that Mr Collins' alleged assertion that Mr Kramer "*was now in contempt of parliament*" is at odds with the procedure set out by Speaker's Counsel (and previously by the Committee on Privileges) and the facts as we understand them.

You have set out in some detail in your letter the parliamentary procedures to be followed. We understand the position is that:

- a) that it was open to the Committee to report a breach of its order to produce the documents to the House of Commons "*as a matter of potential contempt of Parliament*" (emphasis added);
- b) the House would then consider a motion to refer Mr Kramer's case to the Privileges Committee;
- c) it would then be for the Privileges Committee to consider the matter and, if appropriate, recommend a sanction, which would be put to the House for decision; and
- d) the sanctions available include admonishment, imprisonment or fine "*but in modern times these powers have been exercised sparingly*" (which we consider to be something of an understatement).

Although disobedience to an order of a committee may be a contempt of the House, not every failure to comply with an order for production of documents amounts automatically to contempt of parliament. That is a matter to be determined in accordance with the established procedure outlined above, and would require the Privileges Committee, and ultimately the House, to consider whether there had been "improper" obstruction causing "substantial interference" of the performance of the functions of the DCMS Committee.

We understand that the DCMS Committee decided at 11am on 21 November 2018 to report Mr Kramer's breach of its order to the House, and that Mr Collins subsequently did so. As far as we are aware, no further steps have been taken in respect of the report.

We should be grateful if you would clarify as a matter of urgency:

- a) what, if any, steps were taken by the House or by the Privileges Committee following the receipt of a report of breach of an order of the DCMS Committee by Mr Kramer, which we understand was reported to the House on 21 November 2018;
- b) in particular, whether any consideration of that report had been undertaken by the Privileges Committee at the time at which Mr Collins informed Mr Kramer that he "*was*

now in contempt of parliament" (which we understand to be at some point in the afternoon of 21 November 2018); and

- c) whether any finding of contempt had been recommended by the Privileges Committee or made by the House at that time?

We hope that you will appreciate the importance of this clarification to ensure, as far as still remains possible, that due process is followed and that we represent the position accurately to the California Court, with whom we are required to file our own brief in respect of these issues by 28 November 2018.

Yours faithfully

A handwritten signature in black ink that reads "Hogan Lovells International LLP". The script is cursive and fluid, with the letters connected. The "H" is large and prominent, and the "LLP" is written in a slightly more upright style at the end.

Hogan Lovells International LLP

CC Speaker of the House of Commons (speakersoffice@parliament.uk) – Speaker's Office, House of Commons, London, SW1A 0AA

Chair of the Committee on Privileges (privileges@parliament.uk) – Committee of Privileges, Journal Office, House of Commons, Westminster, London SW1A 0AA

EXHIBIT 5



Digital, Culture, Media and Sport Committee

House of Commons, London SW1A 0AA

Tel 020 7219 6120; Email: cmscom@parliament.uk; Website: www.parliament.uk/cms

Mr Theodore Kramer
London Marriott Hotel County Hall
Westminster Bridge Rd
London SE1 7PB

21 November 2018

Dear Mr Kramer,

Order for documents

On Monday 19 November, the Committee made the following Order:

Ordered, That Mr Theodore Kramer submit the following documents to the DCMS Committee in relation to its inquiry into Disinformation and 'fake news', by 5pm on 20th November 2018:

Unredacted copies of Six4Three's opposition to the anti-SLAPP (strategic lawsuits against public participation) motion, filed in the California courts, relating to the company's dispute with Facebook, along with any documents or notes relating Six4Three's opposition to the anti-SLAPP motion.

You did not comply with this order by the 5pm deadline, and failed to supply us with a satisfactory reason for not doing so.

I re-issued the Order on 20 November, with a deadline of 11am today. In the accompanying letter, I warned you that, should you fail to respond by the 11am deadline today, it would be my duty to ask the Committee immediately to report this matter to the House of Commons, and request that it take action against you. As a result of failing to comply with an Order of the Committee you could be considered to be acting in contempt and face investigation and sanction by the House.

The letter was delivered to you in person at 9am this morning by the Serjeant at Arms, as warrant officer of the House.

You again failed to comply.

As a result, the Committee met at 11am and formally ordered that I report your non-compliance to the House. I have taken this action, and reported your failure to comply to the House. This will appear on today's formal record, and the process of investigation will commence.

Yours sincerely,

DAMIAN COLLINS MP,
CHAIR, DIGITAL, CULTURE, MEDIA AND SPORT COMMITTEE

EXHIBIT 6

2-28
MSC

FILED
SAN MATEO COUNTY

OCT 25 2016

Clerk of the Superior Court

By *[Signature]*
REPUTY CLERK

RECEIVED

OCT 20 2016

CLERK OF THE SUPERIOR COURT
CLERK OF THE SUPERIOR COURT
SAN MATEO COUNTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN MATEO

SIX4THREE, LLC a Delaware limited liability company,

Plaintiff,

v.

FACEBOOK, INC., a Delaware corporation and DOES 1-50, inclusive,

Defendant.

Case No. CIV 533328

826
[PROPOSED] ORDER ON SIX4THREE'S MOTION FOR PROTECTIVE ORDER AND FACEBOOK'S MOTION FOR PROTECTIVE ORDER

Date: October 13, 2016

Time: 9:00am.

Dept: Law and Motion

ORIGINAL

CIV533328
GAH
Order After Hearingg
231344



[PROPOSED] ORDER ON MOTIONS FOR PROTECTIVE ORDER
CASE NO. CIV533328

1 Plaintiff Sim4Three LLC's ("Plaintiff") Motion for Protective Order and Defendant
2 Facebook, Inc.'s ("Facebook") Motion for Protective Order came on regularly for hearing before
3 the Court on October 13, 2016 in the Law and Motion Department.

4 The Court having reviewed the moving papers and all opposing and reply papers filed
5 with the Court and having heard the arguments of counsel, hereby DENIES Plaintiff's Motion
6 and GRANTS Defendant's Motion in part as set out below.

7 Pursuant to Code of Civil Procedure Section 2031.060, the Court finds good cause to enter
8 a two-tier protective order.

9 Defendant indicates that Defendant's proposed protective order is similar to the Court's
10 model protective order. After comparing the Court's model protective order for double level of
11 confidentiality to Defendant's proposed protective order, the Court makes the following changes
12 to Defendant's proposed protective order (all paragraph page and line references are to
13 Defendant's proposed protective order):

14 Paragraph 2, p. 2:25 Delete "Highly Confidential" and replace with "Confidential" 1

15 Add to Paragraph 4(d), p. 4:15 (which was omitted from Court's model protective order):
16 "and provided that if the party chooses a consultant or expert employed by the opposing party or
17 one of its competitors, the party shall notify the opposing party, or designating non-party, before
18 disclosing any Confidential Information to that individual and shall give the opposing party an
19 opportunity to move for a protective order preventing or limiting such disclosure;"

20 Delete Paragraph 4(e), p. 4:26-27: "or other person who otherwise possessed or knew the
21 information"

22 Paragraph 8, p. 6:9 Delete "Highly Confidential" and replace with "Confidential" 1

23 Delete Paragraph 11, p. 7:15 only as to "identified (by category, where appropriate)"

24 Delete entire Paragraph 18, p. 11:24-12:27.

25 Delete entire Paragraph 19, p. 12:28-16:6.

26 ///

27 ///

28 ///

1 The Court hereby enters the protective order attached as Exhibit A hereto, which reflects
2 the aforementioned modifications.

3 **IT IS SO ORDERED.**

4 DATED: OCT 24 2016
5

6 Jonathan C. Karel
7 HONORABLE JONATHAN KARESH

8
9 Approved as to form by:

10 PERKINS COLE, LLP

11 QM E. % ' .

12 Julie E. Schwartz

13 BIRNBAUM & GORDIN, LLP

14 James E. Gelfand

15 James E. Gelfand

~~EXHIBIT~~
~~EXHIBIT~~ A

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Attorneys for Defendant
Facebook, Inc.

FILED
SAN MATEO COUNTY

OCT 25 2016

Clerk of the Superior Court

By [Signature]
DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN MATEO

SIXTHREE, LLC, a Delaware limited
liability company,

Plaintiff,

v.

FACEBOOK, INC., a Delaware
corporation and DOES 1-50, inclusive,

Defendant.

Case No. CIV533328

**STIPULATED [PROPOSED]
PROTECTIVE ORDER**

In order to protect confidential information obtained by the parties in connection with this case, the parties by and through their respective undersigned counsel and subject to the approval of the Court hereby agree as follows:

Part One: Use Of Confidential Materials In Discovery

1. Any party or non-party may designate as Confidential Information (by stamping the relevant page or as otherwise set forth herein) any document or response to discovery which that party or non-party considers in good faith to contain information involving trade secrets or

-1-

STIPULATED [PROPOSED] PROTECTIVE ORDER
CASE NO. CIV533328

1 confidential business, financial, or personal information, including personal financial information
2 about any individual or entity; information regarding any individual's or entity's banking
3 relationships with any banking institution including information regarding financial transactions
4 or financial accounts; and any information regarding any individual or entity that is not otherwise
5 available to the public, subject to protection under Rules 2.550, 2.551, 2.580, 2.585, 8.160 and
6 8.490 of the California Rules of Court or under other provisions of California law. Any party or
7 non-party may designate as Highly Confidential Information (by stamping the relevant page or as
8 otherwise set forth herein) any document or response to discovery which that party or non-party
9 considers in good faith to contain information involving highly sensitive trade secrets or
10 confidential business, financial, or personal information, the disclosure of which would result in
11 the disclosure of trade secrets or other highly sensitive research, development, production,
12 personal, commercial, market, financial, or business information, or highly sensitive personal
13 information, subject to protection under Rules 2.550, 2.551, 2.580, 2.585, 8.160 and 8.490 of the
14 California Rules of Court or under other provisions of California law. Where a document or
15 response consists of more than one page, the first page and each page on which confidential
16 information appears shall be so designated.

17 2. A party or non-party may designate information disclosed during a deposition or in
18 response to written discovery as Confidential Information or Highly Confidential Information by
19 so indicating in said responses or on the record at the deposition and requesting the preparation of
20 a separate transcript of such material. In addition, a party or non-party may designate in writing,
21 within thirty (30) days after receipt of said responses or of the deposition transcript for which the
22 designation is proposed, that specific pages of the transcript and/or specific responses be treated
23 as Confidential Information or Highly Confidential Information. Any other party may object to
24 such proposal in writing or on the record. Upon such objection, the parties shall follow the
25 procedure described in Paragraph 9 below. Until the thirty (30) day period for designation has
26 lapsed, the entirety of each deposition transcript shall be treated as Confidential Information.
27 After the thirty (30) day period for designation has lapsed, any documents or information
28 designated pursuant to the procedure set forth in this paragraph shall be treated according to the

1 designation until the matter is resolved according to the procedures described in Paragraph 9
2 below, and counsel for all parties shall be responsible for marking all previously unmarked copies
3 of the designated material in their possession or control with the specified designation. A party
4 that makes original documents or materials available for inspection need not designate them as
5 Confidential Information or Highly Confidential Information until after the inspecting party has
6 indicated which materials it would like copied and produced. During the inspection and before the
7 designation and copying of all of the material made available for inspection shall be considered
8 Highly Confidential Information.

9 3. All Confidential Information or Highly Confidential Information produced or
10 exchanged in the course of this case (not including information that is publicly available) shall be
11 used by the party or parties to whom the information is produced solely for the purpose of this
12 case. Confidential Information or Highly Confidential Information shall not be used for any
13 commercial, competitive, personal, or other purpose. Confidential Information or Highly
14 Confidential Information must be stored and maintained by a receiving party at a location and in a
15 secure manner that ensures that access is limited to the persons authorized under this Stipulated
16 Protective Order. The protections conferred by this Stipulated Protective Order cover not only
17 the Confidential Information or Highly Confidential Information produced or exchanged in this
18 case, but also (1) any information copied or extracted from or reflecting the Confidential
19 Information or Highly Confidential Information; (2) all copies, excerpts, summaries or
20 compilations of Confidential Information or Highly Confidential Information; and (3) any
21 testimony, conversations, or presentations by parties or their counsel that might reveal
22 Confidential Information or Highly Confidential Information. However, the protections
23 conferred by this Stipulated Protective Order do not cover the following information: (a) any
24 information that is in the public domain at the time of disclosure to a receiving party or becomes
25 part of the public domain after its disclosure to a receiving party as a result of publication not
26 involving a violation of this Stipulated Protective Order, including becoming part of the public
27 record through trial or otherwise; and (b) any information known to the receiving party prior to

1 the disclosure or obtained by the receiving party after the disclosure from a source who obtained
2 the information lawfully and under no obligation of confidentiality to the designating party.

3 4. Except with the prior written consent of the other parties or upon prior order of
4 this Court obtained upon notice to opposing counsel, Confidential Information shall not be
5 disclosed to any person other than:

6 (a) counsel for the respective parties to this litigation including in-house
7 counsel and co-counsel retained for this litigation;

8 (b) employees of such counsel;

9 (c) individual parties or officers or employees of a party, to the extent deemed
10 necessary by counsel for the prosecution or defense of this litigation;

11 (d) consultants or expert witnesses retained for the prosecution or defense of
12 this litigation provided that each such person shall execute a copy of the
13 Certification annexed to this Order (which shall be retained by counsel to
14 the party so disclosing the Confidential Information and made available
15 for inspection by opposing counsel during the pendency or after the
16 termination of the action only upon good cause shown and upon order of
17 the Court) before being shown or given any Confidential Information and
18 provided that if the party chooses a consultant or expert employed by the
19 opposing party or one of its competitors, the party shall notify the
20 opposing party or designating non-party before disclosing any
21 Confidential Information to that individual and shall give the opposing
22 party an opportunity to move for a protective order preventing or limiting
23 such disclosure;

24 (e) any authors or recipients of the Confidential Information or a custodian;

25 (f) the Court, court personnel and court reporters; and

26 (g) witnesses (other than persons described in Paragraph 4(c)). A witness shall
27 sign the Certification before being shown a confidential document.

28 Confidential Information may be disclosed to a witness who will not sign

1 the Certification only in a deposition at which the party who designated
2 the Confidential Information is represented or has been given notice that
3 Confidential Information produced by the party may be used. At the
4 request of any party, the portion of the deposition transcript involving the
5 Confidential Information shall be designated "Confidential" pursuant to
6 Paragraph 2 above. Witnesses shown Confidential Information shall not be
7 allowed to retain copies.

8 5. Except with the prior written consent of the other parties or upon prior order of
9 this Court obtained after notice to opposing counsel, Highly Confidential Information shall be
10 treated in the same manner as Confidential Information pursuant to Paragraph 4 above, except
11 that it shall not be disclosed to individual parties or directors, officers or employees of a party, or
12 to witnesses (other than persons described in Paragraph 4(a) or 4(c)).

13 6. Any persons receiving Confidential Information or Highly Confidential
14 Information shall not reveal or discuss such information to or with any person who is not entitled
15 to receive such information except as set forth herein. If a party or any of its representatives, ~~including~~
16 including counsel, inadvertently discloses any Confidential Information or Highly Confidential
17 Information to persons who are not authorized to use or possess such material, the party shall
18 provide immediate written notice of the disclosure to the party whose material was inadvertently
19 disclosed. If a party has actual knowledge that Confidential Information or Highly Confidential
20 Information is being used or possessed by a person not authorized to use or possess that material,
21 regardless of how the material was disclosed or obtained by such person, the party shall provide
22 immediate written notice of the unauthorized use or possession to the party whose material is
23 being used or possessed. No party shall have an affirmative obligation to inform itself regarding
24 such possible use or possession.

25 7. In connection with discovery proceedings as to which a party submits Confidential
26 Information or Highly Confidential Information, all documents and chamber copies containing
27 Confidential Information or Highly Confidential Information which are submitted to the Court
28 shall be filed with the Court in sealed envelopes or other appropriate sealed containers. On the

1 outside of the envelope, a copy of the first page of the document shall be attached. If
2 Confidential Information or Highly Confidential Information is included in the first page attached
3 to the outside of the envelope, it may be deleted from the outside copy. The word
4 "CONFIDENTIAL" shall be stamped on the envelope and a statement substantially in the
5 following form shall also be printed on the envelope:

6 "This envelope is sealed pursuant to Order of the Court, contains Confidential
7 Information and is not to be opened or the contents revealed except by Order of the
8 Court or agreement by the parties's."

9 8. A party may designate as Confidential Information or Highly Confidential
10 Information documents or discovery materials produced by a non-party by providing written
11 notice to all parties of the relevant document numbers or other identification within thirty (30)
12 days after receiving such documents or discovery materials. Until the thirty (30) day period for
13 designation has lapsed, any documents or discovery materials produced by a non-party shall be
14 treated as Confidential Information. Any party or non-party may voluntarily disclose to others
15 without restriction any information designated by that party or non-party as Confidential
16 Information or Highly Confidential Information, although a document may lose its Confidential
17 status if it is made public. If a party produces materials designated Confidential Information or
18 Highly Confidential Information in compliance with this Order, that production shall be deemed
19 to have been made consistent with any confidentiality or privacy requirements mandated by local,
20 state or federal laws.

21 9. If a party contends that any material is not entitled to confidential treatment, such
22 party may at any time give written notice to the party or non-party who designated the material.
23 The party or non-party who designated the material shall have twenty (20) days from the receipt
24 of such written notice to apply to the Court for an order designating the material as Confidential.
25 The party or non-party seeking the order has the burden of establishing that the document is
26 entitled to protection.

10. Notwithstanding any challenge to the designation of material as Confidential Information or Highly Confidential Information, all documents shall be treated as such and shall be subject to the provisions hereof unless and until one of the following occurs:

- (a) the party or non-party who claims that the material is Confidential Information or Highly Confidential Information withdraws such designation in writing; or,
- (b) the party or non-party who claims that the material is Confidential Information or Highly Confidential Information fails to apply to the Court for an order designating the material confidential within the time period specified above after receipt of a written challenge to such designation; or,
- (c) the Court rules the material is not Confidential Information or Highly Confidential Information.

11. All provisions of this Order restricting the communication or use of Confidential Information or Highly Confidential Information shall continue to be binding after the conclusion of this action unless otherwise agreed or ordered. Upon conclusion of the litigation a party in the possession of Confidential Information or Highly Confidential Information shall within sixty (60) days either (a) return such documents to counsel for the party or non-party who provided such information, or (b) destroy such documents. Whether the Confidential Information or Highly Confidential Information is returned or destroyed, the receiving party must submit a written certification to the producing party (and, if for the same person or entity to the designating party) by the 60 day deadline that (1) all the Confidential Information or Highly Confidential Information that was returned or destroyed, and (2) affirms that the receiving party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Confidential Information or Highly Confidential Information. Notwithstanding this provision, counsel are entitled to retain an archival copy of all pleadings, motion papers, trial deposition and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product and consultant and expert work product, even if such materials contain Confidential Information or Highly Confidential

1 Information. Any such archival copies that contain or constitute Confidential Information or
2 Highly Confidential Information remain subject to this Stipulated Protective Order. The
3 conclusion of the litigation shall be deemed to be the later of (1) dismissal of all claims and
4 defenses in this action, with or without prejudice; and (2) final judgment herein after the
5 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
6 including the time limits for filing any motions or applications for extension of time pursuant to
7 applicable law. After the conclusion of this action, this Court will retain jurisdiction to enforce
8 the terms of this Order.

9 12. Nothing herein shall be deemed to waive any applicable privilege or work product
10 protection or to affect the ability of a party to seek relief for an inadvertent disclosure of material
11 protected by privilege or work product protection. Any witness or other person, firm or entity
12 from which discovery is sought may be informed of and may obtain the protection of this Order
13 by written advice to the parties' respective counsel or by oral advice at the time of any deposition or
14 or similar proceeding.

15 13. In the event that any Confidential Information or Highly Confidential Information
16 is inadvertently produced without such designation, the party or non-party that inadvertently
17 produced the information without designation shall give written notice of such inadvertent
18 production promptly after the party or non-party discovers the inadvertent failure to designate
19 (but no later than fourteen (14) calendar days after the party or non-party discovers the
20 inadvertent failure to designate) together with a further copy of the subject information
21 designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" (the "Inadvertent Production
22 Notice"). Upon receipt of such Inadvertent Production Notice, the party that received the
23 information that was inadvertently produced without designation shall promptly destroy the
24 inadvertently produced information and all copies thereof or, at the expense of the producing
25 party or non-party, return such together with all copies of such information to counsel for the
26 producing party and shall retain only the newly produced versions of the information that are
27 designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL." This provision is not
28 intended to apply to any inadvertent production of any information or materials protected by

1 attorney-client or work product privileges which inadvertent production is governed by Section
2 14 below.

3 14. In the event that any party or non-party inadvertently produces information that is
4 privileged or otherwise protected from disclosure during the discovery process ("Inadvertent
5 Production Material") the following shall apply:

6 (a) Such inadvertent production or disclosure shall in no way prejudice or
7 otherwise constitute a waiver of, or estoppel as to, any claim of attorney-client privilege, attorney
8 work product protection, or other applicable protection in this case or any other federal or state
9 proceedings, provided that the producing party shall notify the receiving party in writing of such
10 protection or privilege promptly after the producing party discovers such materials have been
11 inadvertently produced.

12 (b) If a claim of inadvertent production is made, pursuant to this Stipulated
13 Protective Order, with respect to discovery material then in the custody of another party, that
14 party shall: (i) refrain from any further examination or disclosure of the claimed Inadvertent
15 Production Material; (ii) promptly make a good faith effort to return the claimed Inadvertent
16 Production Material and all copies thereof (including summaries and excerpts) to counsel for the
17 producing party, or destroy all such claimed Inadvertent Production Material (including
18 summaries and excerpts) and certify in writing to that fact; and (iii) not disclose or use the
19 claimed Inadvertent Production Material for any purpose until further order of the Court expressly
20 authorizing such use.

21 (c) A party may move the Court for an order compelling production of the
22 Inadvertent Production Material on the ground that it is not, in fact, privileged or protected. The
23 motion shall be filed under seal and shall not assert as a ground for entering such an order the fact
24 or circumstances of the inadvertent production. The producing party retains the burden of
25 establishing the privileged or protected nature of any inadvertently disclosed or produced
26 information. While such a motion is pending, the Inadvertent Production Material at issue shall
27 be treated in accordance with Paragraph 14(b) above.

1 (d) If a party, in reviewing discovery material it has received from any other
2 party or any non-party finds anything the reviewing party believes in good faith may be
3 Inadvertent Production Material, the reviewing party shall: (i) refrain from any further
4 examination or disclosure of the potentially Inadvertent Production Material; (ii) promptly
5 identify the material in question to the producing party (by document number or other equally
6 precise description); and (iii) give the producing party seven (7) days to respond as to whether the
7 producing party will make a claim of inadvertent production. If the producing party makes such a
8 claim, the provisions of Paragraphs 14(a)(c) above shall apply.

9 15. The parties agree that should the production of source code become necessary,
10 they will need to amend or supplement the terms of this Order. To the extent production of
11 source code becomes necessary in this case, the parties will work expeditiously to propose
12 amendments to this Order to cover any production of source code.

13 16. If a party is served with a subpoena or a court order issued in other litigation that
14 compels disclosure of any Confidential Information or Highly Confidential Information, the
15 receiving party must:

16 (a) promptly notify in writing the designating party. Such notification shall
17 include a copy of the subpoena or court order;

18 (b) promptly notify in writing the party who caused the subpoena or order to
19 issue in the other litigation that some or all of the material covered by the subpoena or order is
20 subject to this Stipulated Protective Order. Such notification shall include a copy of this
21 Stipulated Protective Order; and

22 (c) cooperate with respect to all reasonable procedures sought to be pursued by
23 the designating party whose Confidential Information or Highly Confidential Information may be
24 affected.

25 If the designating party timely seeks a protective order, the party served with the subpoena
26 or court order shall not produce any Confidential Information or Highly Confidential Information
27 before a determination by the court from which the subpoena or order issued unless the party has
28 obtained the designating party's permission. The designating party shall bear the burden and

1 expense of seeking protection in that court of its confidential material and nothing in these
2 provisions should be construed as authorizing or encouraging a receiving party in this action to
3 disobey a lawful directive from another court.

4 17. The following additional terms apply to non-party discovery material:

5 (a) The terms of this Order are applicable to information produced by a non-
6 party in this action and designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL."
7 Such information produced by non-parties in connection with this litigation is protected by the
8 remedies and relief provided by this Order. Nothing in these provisions should be construed as
9 prohibiting a non-party from seeking additional protections.

10 (b) In the event that a party is required by a valid discovery request to
11 produce a non-party's confidential information in its possession, and the party is subject to an
12 agreement with the non-party not to produce the non-party's confidential information, then the
13 party shall:

14 i. promptly notify in writing the requesting party and the non-party
15 that some or all of the information requested is subject to a confidentiality agreement with a non-
16 party;

17 ii. promptly provide the non-party with a copy of the Stipulated
18 Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific
19 description of the information requested; and

20 iii. make the information requested available for inspection by the non-
21 party.

22 (c) If the non-party fails to object or seek a protective order from this Court
23 within 28 days of receiving the notice and accompanying information, the receiving party may
24 produce the non-party's confidential information responsive to the discovery request. If the non-
25 party timely seeks a protective order, the receiving party shall not produce any information in its
26 possession or control that is subject to the confidentiality agreement with the non-party before a
27 determination by the Court. Absent a court order to the contrary, the non-party shall bear the
28

burden and expense of seeking protection in this Court of its Confidential Information or Highly Confidential Information.

18. Nothing in this Stipulated Protective Order shall be construed to preclude any party from asserting in good faith that certain Confidential Information or Highly Confidential Information requires additional protection. The parties shall meet and confer to agree upon the terms of such additional protection. By stipulating to the entry of this Protective Order, no party waives any right it otherwise would have to object to disclosing or producing any information on it on any ground not addressed in this Stipulated Protective Order. Similarly, no party waives any right to object on any ground to use in evidence of any of the material covered by this Stipulated Protective Order. Nothing in this Stipulated Protective Order abridges the right of any person to seek its modification by the Court in the future.

Part Two: Use of Confidential Materials in Court

The following provisions govern the treatment of Confidential Information or Highly Confidential Information used at trial or submitted as a basis for adjudication of matters other than discovery motions or proceedings. These provisions are subject to Rules 2.550, 2.551, 2.580, 2.585, 8.160 and 8.490 of the California Rules of Court and must be construed in light of those Rules.

19. A party that files with the Court or seeks to use at trial materials designated as Confidential Information or Highly Confidential Information, and who seeks to have the record containing such information sealed, shall submit to the Court a motion or an application to seal, pursuant to California Rule of Court 2.551.

20. A party that files with the Court or seeks to use at trial materials designated as Confidential Information or Highly Confidential Information by anyone other than itself and who does not seek to have the record containing such information sealed shall comply with either of the following requirements:

- (a) At least ten (10) business days prior to the filing or use of the Confidential Information or Highly Confidential Information, the submitting party shall give notice to all other parties and to any non-party that designated the

1 materials as Confidential Information or Highly Confidential Information
2 pursuant to this Order, of the submitting party's intention to file or use the
3 Confidential Information or Highly Confidential Information, including
4 specific identification of the Confidential Information or Highly
5 Confidential Information. Any affected party or non-party may then file a
6 motion to seal pursuant to California Rule of Court 2.553(b) or
7 (b)(b) At the time of filing or desiring to use the Confidential Information or
8 Highly Confidential Information, the submitting party shall submit the
9 materials pursuant to the lodging under seal provision of California Rule of
10 Court 2.551(d). Any affected party or non-party may then file a motion to
11 seal pursuant to the California Rule of Court 2.553(b) within ten (10)
12 business days after such lodging. Documents lodged pursuant to California
13 Rule of Court 2.553(d) shall bear a legend stating that such materials shall
14 be unsealed upon expiration of ten (10) business days, absent the filing of a
15 motion to seal pursuant to Rule 2.553(b) or Court order.

16 21. In connection with a request to have materials sealed pursuant to Paragraph 12 or
17 Paragraph 13, the requesting party's declaration pursuant to California Rule of Court 2.553(b)(6)(1)
18 shall contain sufficient particularity with respect to the particular Confidential Information
19 Highly Confidential Information and the basis for sealing to enable the Court to make the findings
20 required by California Rule of Court 2.553(d).

21 **IT IS SO STIPULATED.**

22
23 DATED: _____, 2016

24 **PERKINS COIE LLP**

25 By: _____
26 Julie E. Schwartz
27 *Attorney for Defendant*
28 *Facebook, Inc.*

1 DATED: _____, 2016

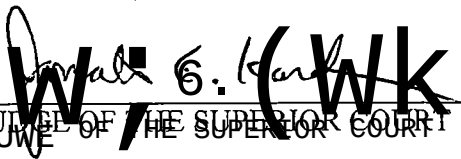
BIRNBAUM & GORDIN, LLP

2
3 By: _____
David Godkin

4 Attorneys for Plaintiff
5 SIX4THREE, LLC

6
7 **IT IS SO ORDERED.**

8
9 DATED: 11/6/16, 2016

10 
JUDGE OF THE SUPERIOR COURT

CERTIFICATION

I hereby certify my understanding that Confidential Information or Highly Confidential Information is being provided to me pursuant to the terms and restrictions of this Stipulation and Protective Order Regarding Confidential Information filed on _____, 2016, in *Six4Three LLC v. Facebook, Inc.* San Mateo County Superior Court Case No. CIV533328 ("Order"). I have been given a copy of that Order and read it.

I agree to be bound by the Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I will not reveal the Confidential Information or Highly Confidential Information to anyone, except as allowed by the Order. I will maintain all such Confidential Information or Highly Confidential Information, including copies, notes, or other transcriptions made therefrom, in a secure manner to prevent unauthorized access to it. No later than thirty (30) days after the conclusion of this action, I will return the Confidential Information or Highly Confidential Information, including copies, notes, or other transcriptions made therefrom, to the counsel who provided me with the Confidential Information or Highly Confidential Information. I hereby consent to the jurisdiction of the San Mateo County Superior Court for the purpose of enforcing the Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ located at the address of _____ as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

I declare under penalty of perjury that the foregoing is true and correct and that this certificate is executed this _____ day of _____, 2016, at _____.

By: _____

Address: _____

Phone: _____

EXHIBIT 7

November 19, 2018

BY EMAIL (damian.collins.mp@parliament.uk)

Mr. Damian Collins MP
Chair, Digital, Culture, Media and Sports Committee
House of Commons
London SW1A 0AA

*Order for Documents Served on Six4Three's Principal, Ted Kramer, on
November 19, 2018*

Dear Mr. Collins:

I represent Mr. Kramer's firm, Six4Three, in *Six4Three, LLC v. Facebook, Inc., et al.*, Case No. Civ 533328, pending in California Superior Court, County of San Mateo. I am in receipt of an Order for Documents served upon Mr. Kramer this morning, November 19, 2018 from the Parliament of the United Kingdom to compel the production of certain documents in his possession ("Order," attached hereto as **Exhibit A**), including:

Unredacted copies of Six4Three's opposition to the anti-SLAPP (strategic lawsuits against public participation) motion, filed in the California courts, relating to the company's dispute with Facebook, along with any documents or notes relating Six4Three's opposition to the anti-SLAPP motion.

Order, at 1. The Order further requires Mr. Kramer to comply no later than 5pm local time on Tuesday, November 20th, 2018 or he may be held in contempt and could face investigation and sanction by Parliament.

I write to notify you that some of the documents you have requested are subject to a Protective Order entered October 25, 2016 ("Protective Order," attached hereto as **Exhibit B**). This letter serves as your immediate notice of the Protective Order as required under its Section 16(b).

Further, for avoidance of doubt, please note the procedure available to Defendants under the Protective Order:

"If the designating party timely seeks a protective order, the party served with the subpoena or court order shall not produce any Confidential Information or **Highly Confidential Information**



before a determination by the court from which the subpoena or order issued, unless the party has obtained the designating party's permission. The designating party shall bear the burden and expense of seeking protection in that court of its confidential material and nothing in these provisions should be construed as authorizing or encouraging a receiving party in this action to disobey a lawful directive from another court" (emphasis added).

Protective Order, Section 16, at 10-11. My client is required to and will comply with this procedure set forth in the Protective Order. If Defendants intend to seek relief in the Parliament of the United Kingdom, which is the entity "from which the subpoena or order issued," we have requested they do so prior to the deadline imposed by the Order.


S. Godkin

DSG:cam

cc: Ms. Chloe Challenger (By email to challenderc@parliament.uk)
Culture, Media & Sport Committee (By email to CMSCOM@parliament.uk)
Joshua Lerner, Esq. (By email)
Sonal Mehta, Esq. (By email)
Catherine Kim, Esq. (By email)
Service Six Three (By email)
Stuart G. Gross, Esq. (By email)
James E. Kruzer, Esq. (By email)

EXHIBIT A

Digital, Culture, Media and Sport Committee

House of Commons, London SW1A 0AA
Tel 020 7219 6120 Email cmscom@parliament.uk Website

Mr Theodore Kramer
London Marriott Hotel County Hall
Westminster Bridge Rd
London SE1 7PB

19th November 2018

Dear Mr Kramer,

Order for documents

The Digital, Culture, Media and Sport Committee has been given the power by the House of Commons under Standing Order No. 152(4) "to send for persons, papers and records". This includes the power to compel the production of papers by people within UK jurisdiction.

On Monday 19 November, the Committee made the following order (which will be published in its formal minutes in due course):

Ordered, That Mr Theodore Kramer submit the following documents to the DCMS Committee in relation to its inquiry into Disinformation and 'fake news', by 5pm on 20th November 2018:

Unredacted copies of Six4Three's opposition to the anti-SLAPP (strategic lawsuits against public participation) motion, filed in the California courts, relating to the company's dispute with Facebook, along with any documents or notes relating to Six4Three's opposition to the anti-SLAPP motion.

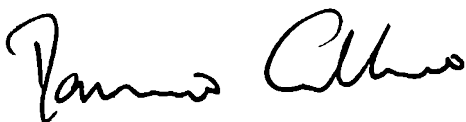
We are requesting these documents because we believe that they contain information that is highly relevant to our ongoing investigation into disinformation and fake news. In particular, we are interested to know whether they can provide further insights to the committee about what senior executives at Facebook knew about concerns relating to Facebook users' data privacy, and developers' access to user data. The Committee's request is made for these reasons, and in no way suggests any support for the position of your organisation in its dispute with Facebook.

As noted in Erskine May's *Parliamentary Practice*: "there is no restriction on the power of committees to require the production of papers by private bodies or individuals provided that such papers are relevant to the committee's work as defined by its order of reference. [...] Solicitors have been ordered to produce papers relating to a client" (Erskine May, *Parliamentary Practice*, 24th edition, 2011, p.819.)

As Erskine May also notes: "Individuals have been held in contempt who [...] have disobeyed or frustrated committee orders for the production of papers" (p.839). Should you fail to comply with the order of the Committee and were found to be in contempt, you could face investigation and sanction by the House.

We require the documents by 5pm on Tuesday 20th November 2018. I look forward to your compliance with this Order.

Yours sincerely,



DAMIAN COLLINS MP
CHAIR, DIGITAL, CULTURE, MEDIA AND SPORT COMMITTEE

Digital, Culture, Media and Sport Committee

House of Commons, London SW1A 0AA

Tel 020 7219 6120 Email cmscom@parliament.uk Website

19 November 2018

Extract from formal minutes of the Committee of 19 November 2018:

Ordered, That Mr Theodore Kramer submit the following documents to the DCMS Committee in relation to its inquiry into Disinformation and ‘fake news’, by 5pm on 20th November 2018:

Unredacted copies of Six4Three's opposition to the anti-SLAPP (strategic lawsuits against public participation) motion, filed in the California courts, relating to the company's dispute with Facebook, along with any documents or notes relating Six4Three's opposition to the anti-SLAPP motion.

\

DAMIAN COLLINS MP

CHAIR, DCMS COMMITTEE

EXHIBIT B

[illegible]

1 confidential business, financial or personal information, including personal financial information on
2 about any individual or entity; information regarding any individual or entity's banking
3 relationship with any banking institution, including information regarding financial transactions
4 or financial accounts; and any information regarding any individual or entity that is not otherwise
5 available to the public, subject to protection under Rules 2.550, 2.551, 2.580, 2.585, 8.100 and
6 8.400 of the California Rules of Court or under other provisions of California law. Any party or
7 non-party may designate as Highly Confidential Information (by stamping the relevant page or as
8 otherwise set forth herein) any document or response to discovery which that party or non-party
9 considers in good faith to contain information involving highly sensitive trade secrets or
10 confidential business, financial or personal information, the disclosure of which would result in
11 the disclosure of trade secrets or other highly sensitive research, development, production,
12 personal, commercial, market, financial or business information, or highly sensitive personal
13 information, subject to protection under Rules 2.550, 2.551, 580, 2.585, 8.100 and 8.400 of the
14 California Rules of Court or under other provisions of California law. Where a document or
15 response consists of more than one page, the first page and each page on which confidential a
16 information appears shall be so designated.

17 2. A party or non-party may designate information disclosed during a deposition or in
18 response to written discovery as Confidential Information or Highly Confidential Information by
19 so indicating in said responses or on the record at the deposition and requesting the preparation of
20 a separate transcript of such material. In addition, a party or non-party may designate in writing,
21 within thirty (30) days after receipt of said responses or of the deposition transcript for which the
22 designation is proposed, that specific pages of the transcript and/or specific responses be treated
23 as Confidential Information or Highly Confidential Information. Any other party may object to
24 such proposal in writing or on the record. Upon such objection, the parties shall follow the
25 procedures described in Paragraph 9 below. Until the thirty (30) day period for designation has
26 lapsed, the entirety of each deposition transcript shall be treated as Confidential Information.
27 After the thirty (30) day period for designation has lapsed, any documents or information
28 designated pursuant to the procedure set forth in this paragraph shall be treated according to the

1 designation until the matter is resolved according to the procedures described in Paragraph 9
2 below, and counsel for all parties shall be responsible for marking all previously unmarked copies
3 of the designated material in their possession or control with the specified designation. A party
4 that makes original documents or materials available for inspection need not designate them as
5 Confidential Information or Highly Confidential Information until after the inspecting party has
6 indicated which materials it would like copied and produced. During the inspection and before the
7 designation and copying, all of the material made available for inspection shall be considered
8 Highly Confidential Information.

9 3. All Confidential Information or Highly Confidential Information produced or
10 exchanged in the course of this case (not including information that is publicly available) shall be
11 used by the party or parties to whom the information is produced solely for the purpose of this
12 case. Confidential Information or Highly Confidential Information shall not be used for any
13 commercial, competitive, personal, or other purpose. Confidential Information or Highly
14 Confidential Information must be stored and maintained by a receiving party at a location and in a
15 secure manner that ensures that access is limited to the persons authorized under this Stipulated
16 Protective Order. The protections conferred by this Stipulated Protective Order cover not only
17 the Confidential Information or Highly Confidential Information produced or exchanged in this
18 case, but also (1) any information copied or extracted from or reflecting the Confidential
19 Information or Highly Confidential Information; (2) all copies, excerpts, summaries, or
20 compilations of Confidential Information or Highly Confidential Information; and (3) any
21 testimony, conversations, or presentations by parties or their counsel that might reveal
22 Confidential Information or Highly Confidential Information. However, the protections
23 conferred by this Stipulated Protective Order do not cover the following information: (a) any
24 information that is in the public domain at the time of disclosure to a receiving party or becomes
25 part of the public domain after its disclosure to a receiving party as a result of publication not
26 involving a violation of this Stipulated Protective Order, including becoming part of the public
27 record through trial or otherwise; and (b) any information known to the receiving party prior to
28

1 the disclosure obtained by the receiving party after the disclosure from a source who obtained
2 the information lawfully and under no obligation of confidentiality to the designating party.

3 4. Except with the prior written consent of the other parties or upon prior order of
4 this Court obtained upon notice to opposing counsel, Confidential Information shall not be
5 disclosed to any person other than:

6 (a) counsel for the respective parties to this litigation including in-house
7 counsel and co-counsel retained for this litigation;

8 (b) employees of such counsel;

9 (c) individual parties or officers or employees of a party, to the extent deemed
10 necessary by counsel for the prosecution or defense of this litigation;

11 (d) consultants or expert witnesses retained for the prosecution or defense of
12 this litigation provided that each such person shall execute a copy of the
13 Certification annexed to this Order (which shall be retained by counsel to
14 the party so disclosing the Confidential Information and made available
15 for inspection by opposing counsel during the pendency or after the
16 termination of the action only upon good cause shown and upon order of
17 the Court) before being shown or given any Confidential Information and
18 provided that if the party chooses a consultant or expert employed by the
19 opposing party or one of its competitors, the party shall notify the
20 opposing party or designating non-party before disclosing any
21 Confidential Information to that individual and shall give the opposing
22 party an opportunity to move for a protective order preventing or limiting
23 such disclosure;

24 (e) any author or recipients of the Confidential Information or a custodian;

25 (f) the Court, court personnel and court reporters; and

26 (g) witnesses (other than persons described in Paragraph 4(e)). A witness shall
27 sign the Certification before being shown a confidential document.

28 Confidential Information may be disclosed to a witness who will not sign

1 the Certification only in a deposition at which the party who designated
2 the Confidential Information is represented or has been given notice that
3 Confidential Information produced by the party may be used. At the
4 request of any party, the portion of the deposition transcript involving the
5 Confidential Information shall be designated "Confidential" pursuant to
6 Paragraph 2 above. Witnesses shown Confidential Information shall not be
7 allowed to retain copies.

8 5. Except with the prior written consent of the other parties or upon prior order of
9 this Court obtained after notice to opposing counsel, Highly Confidential Information shall be
10 treated in the same manner as Confidential Information pursuant to Paragraph 4 above, except
11 that it shall not be disclosed to individual parties or directors, officers or employees of a party, or
12 to witnesses (other than persons described in Paragraph 4(a) or 4(c)).

13 6. Any persons receiving Confidential Information or Highly Confidential
14 Information shall not reveal or discuss such information to or with any person who is not entitled
15 to receive such information, except as set forth herein. If a party or any of its representatives, ~~es,~~
16 including counsel, inadvertently discloses any Confidential Information or Highly Confidential
17 Information to persons who are not authorized to use or possess such material, the party shall
18 provide immediate written notice of the disclosure to the party whose material was inadvertently
19 disclosed. If a party has actual knowledge that Confidential Information or Highly Confidential
20 Information is being used or possessed by a person not authorized to use or possess that material,
21 regardless of how the material was disclosed or obtained by such person, the party shall provide
22 immediate written notice of the unauthorized use or possession to the party whose material is
23 being used or possessed. No party shall have an affirmative obligation to inform itself regarding
24 such possible use or possession.

25 7. In connection with discovery proceedings as to which a party submits Confidential
26 Information or Highly Confidential Information, all documents and chamber copies containing
27 Confidential Information or Highly Confidential Information which are submitted to the Court
28 shall be filed with the Court in sealed envelopes or other appropriate sealed containers. On the

1 outside of the envelope, a copy of the first page of the document shall be attached. If
2 Confidential Information or Highly Confidential Information is included in the first page attached
3 to the outside of the envelope, it may be deleted from the outside copy. The word
4 "CONFIDENTIAL" shall be stamped on the envelope and a statement substantially in the
5 following form shall also be printed on the envelope:

6 "This envelope is sealed pursuant to Order of the Court, contains Confidential
7 Information and is not to be opened or the contents revealed, except by Order of the
8 Court or agreement by the parties". "

9 8. A party may designate as Confidential Information or Highly Confidential
10 Information documents or discovery materials produced by a non-party by providing written
11 notice to all parties of the relevant document numbers or other identification within thirty (30)
12 days after receiving such documents or discovery materials. Until the thirty (30) day period for
13 designation has lapsed, any documents or discovery materials produced by a non-party shall be
14 treated as Confidential Information. Any party or non-party may voluntarily disclose to others
15 without restriction any information designated by that party or non-party as Confidential
16 Information or Highly Confidential Information, although a document may lose its Confidential
17 status if it is made public. If a party produces materials designated Confidential Information or
18 Highly Confidential Information in compliance with this Order, that production shall be deemed
19 to have been made consistent with any confidentiality or privacy requirements mandated by local,
20 state or federal laws.

21 9. If a party contends that any material is not entitled to confidential treatment, such
22 party may at any time give written notice to the party or non-party who designated the material.
23 The party or non-party who designated the material shall have twenty (20) days from the receipt
24 of such written notice to apply to the Court for an order designating the material as Confidential.
25 The party or non-party seeking the order has the burden of establishing that the document is
26 entitled to protection.

10. Notwithstanding any challenge to the designation of material as Confidential Information or Highly Confidential Information, all documents shall be treated as such and shall be subject to the provisions hereof unless and until one of the following occurs:

- (a) the party or non-party who claims that the material is Confidential Information or Highly Confidential Information withdraws such designation in writing; or,
- (b) the party or non-party who claims that the material is Confidential Information or Highly Confidential Information fails to apply to the Court for an order designating the material confidential within the time period specified above after receipt of a written challenge to such designation; or,
- (c) the Court rules the material is not Confidential Information or Highly Confidential Information.

11. All provisions of this Order restricting the communication or use of Confidential Information or Highly Confidential Information shall continue to be binding after the conclusion of this action unless otherwise agreed or ordered. Upon conclusion of the litigation a party in the possession of Confidential Information or Highly Confidential Information shall within sixty (60) days either (a) return such documents to counsel for the party or non-party who provided such information, or (b) destroy such documents. Whether the Confidential Information or Highly Confidential Information is returned or destroyed, the receiving party must submit a written certification to the producing party (and, if for the same person or entity to the designating party) by the 60 day deadline that (1) all the Confidential Information or Highly Confidential Information that was returned or destroyed, and (2) affirms that the receiving party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Confidential Information or Highly Confidential Information. Notwithstanding this provision counsel are entitled to retain an archival copy of all pleadings, motion papers, trial deposition and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product and consultant and expert work product even if such materials contain Confidential Information or Highly Confidential

1 Information. Any such archival copies that contain or constitute Confidential Information or
2 Highly Confidential Information remain subject to this Stipulated Protective Order. The
3 conclusion of the litigation shall be deemed to be the later of (1) dismissal of all claims and
4 defenses in this action, with or without prejudice; and (2) final judgment herein after the
5 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
6 including the time limits for filing any motions or applications for extension of time pursuant to
7 applicable law. After the conclusion of this action, this Court will retain jurisdiction to enforce
8 the terms of this Order.

9 12. Nothing herein shall be deemed to waive any applicable privilege or work product
10 protection or to affect the ability of a party to seek relief for an inadvertent disclosure of material
11 protected by privilege or work product protection. Any witness or other person, firm or entity
12 from which discovery is sought may be informed of and may obtain the protection of this Order
13 by written advice to the parties' respective counsel or by oral advice at the time of any deposition or
14 or similar proceeding.

15 13. In the event that any Confidential Information or Highly Confidential Information
16 is inadvertently produced without such designation, the party or non-party that inadvertently
17 produced the information without designation shall give written notice of such inadvertent
18 production promptly after the party or non-party discovers the inadvertent failure to designate
19 (but no later than fourteen (14) calendar days after the party or non-party discovers the
20 inadvertent failure to designate) together with a further copy of the subject information
21 designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" (the "Inadvertent Production
22 Notice"). Upon receipt of such Inadvertent Production Notice, the party that received the
23 information that was inadvertently produced without designation shall promptly destroy the
24 inadvertently produced information and all copies thereof or, at the expense of the producing
25 party or non-party, return such together with all copies of such information to counsel for the
26 producing party and shall retain only the newly produced versions of that information that are
27 designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL." This provision is not
28 intended to apply to any inadvertent production of any information or materials protected by

1 attorney-client or work product privileges, which inadvertent production is governed by Section
2 14 below.

3 14. In the event that any party or non-party inadvertently produces information that is
4 privileged or otherwise protected from disclosure during the discovery process ("Inadvertent
5 Production Material") the following shall apply:

6 (a) Such inadvertent production or disclosure shall in no way prejudice or
7 otherwise constitute a waiver of, or estoppel as to, any claim of attorney-client privilege, attorney
8 work product protection, or other applicable protection in this case or any other federal or state
9 proceeding, provided that the producing party shall notify the receiving party in writing of such
10 protection or privilege promptly after the producing party discovers such materials have been
11 inadvertently produced.

12 (b) If a claim of inadvertent production is made, pursuant to this Stipulated
13 Protective Order, with respect to discovery material then in the custody of another party, that
14 party shall: (i) refrain from any further examination or disclosure of the claimed Inadvertent
15 Production Material; (ii) promptly make a good faith effort to return the claimed Inadvertent
16 Production Material and all copies thereof (including summaries and excerpts) to counsel for the
17 producing party, or destroy all such claimed Inadvertent Production Material (including
18 summaries and excerpts) and certify in writing to that fact; and (iii) not disclose or use the
19 claimed Inadvertent Production Material for any purpose until further order of the Court expressly
20 authorizing such use.

21 (c) A party may move the Court for an order compelling production of the
22 Inadvertent Production Material on the ground that it is not, in fact, privileged or protected. The
23 motion shall be filed under seal and shall not assert as a ground for entering such an order the fact
24 or circumstance of the inadvertent production. The producing party retains the burden of
25 establishing the privileged or protected nature of any inadvertently disclosed or produced
26 information. While such a motion is pending, the Inadvertent Production Material at issue shall
27 be treated in accordance with Paragraph 14(b) above.

1 (d) If a party, in reviewing discovery material it has received from any other
2 party or any non-party, finds anything the reviewing party believes in good faith may be
3 Inadvertent Production Material, the reviewing party shall: (i) refrain from any further
4 examination or disclosure of the potentially Inadvertent Production Material; (ii) promptly
5 identify the material in question to the producing party (by document number or other equally
6 precise description); and, (iii) give the producing party seven (7) days to respond as to whether the
7 producing party will make a claim of inadvertent production. If the producing party makes such a
8 claim, the provisions of Paragraphs 14(a)-(c) above shall apply.

9 15. The parties agree that should the production of source code become necessary,
10 they will need to amend or supplement the terms of this Order. To the extent production of
11 source code becomes necessary in this case, the parties will work expeditiously to propose
12 amendments to this Order to cover any production of source code.

13 16. If a party is served with a subpoena or a court order issued in other litigation that
14 compels disclosure of any Confidential Information or Highly Confidential Information, the
15 receiving party must:

16 (a) promptly notify in writing the designating party. Such notification shall
17 include a copy of the subpoena or court order;

18 (b) promptly notify in writing the party who caused the subpoena or order to
19 issue in the other litigation that some or all of the material covered by the subpoena or order is
20 subject to this Stipulated Protective Order. Such notification shall include a copy of this
21 Stipulated Protective Order; and

22 (c) cooperate with respect to all reasonable procedures sought to be pursued by
23 the designating party whose Confidential Information or Highly Confidential Information may be
24 affected.

25 If the designating party timely seeks a protective order, the party served with the subpoena
26 or court order shall not produce any Confidential Information or Highly Confidential Information
27 before a determination by the court from which the subpoena or order issued unless the party has
28 obtained the designating party's permission. The designating party shall bear the burden and

1 expense of seeking protection in that court of its confidential material and nothing in these
2 provisions should be construed as authorizing or encouraging a receiving party in this action to
3 disobey a lawful directive from another court.

4 17. The following additional terms apply to non-party discovered material:

5 (a) The terms of this Order are applicable to information produced by a non-
6 party in this action and designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL." Such
7 information produced by non-parties in connection with this litigation is protected by the
8 remedies and relief provided by this Order. Nothing in these provisions should be construed as
9 prohibiting a non-party from seeking additional protections.

10 (b) In the event that a party is required by a valid discovery request to
11 produce a non-party's confidential information in its possession and the party is subject to an
12 agreement with the non-party not to produce the non-party's confidential information, then the
13 party shall:

14 i. promptly notify in writing the requesting party and the non-party
15 that some or all of the information requested is subject to a confidentiality agreement with a non-
16 party;

17 ii. promptly provide the non-party with a copy of the Stipulated
18 Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific
19 description of the information requested; and

20 iii. make the information requested available for inspection by the non-
21 party.

22 (c) If the non-party fails to object or seek a protective order from this Court
23 within 28 days of receiving the notice and accompanying information, the receiving party may
24 produce the non-party's confidential information responsive to the discovery request. If the non-
25 party timely seeks a protective order, the receiving party shall not produce any information in its
26 possession or control that is subject to the confidentiality agreement with the non-party before a
27 determination by the Court. Absent a court order to the contrary, the non-party shall bear the
28

1 burden and expense of seeking protection in this Court of its Confidential Information or Highly
2 Confidential Information.

3 18. Nothing in this Stipulated Protective Order shall be construed to preclude any
4 party from asserting in good faith that certain Confidential Information or Highly Confidential
5 Information requires additional protection. The parties shall meet and confer to agree upon the
6 terms of such additional protection. By stipulating to the entry of this Protective Order no party
7 waives any right it otherwise would have to object to disclosing or producing any information or
8 item on any ground not addressed in this Stipulated Protective Order. Similarly, no party waives
9 any right to object on any ground to use in evidence of any of the material covered by this
10 Stipulated Protective Order. Nothing in this Stipulated Protective Order abridges the right of any
11 person to seek its modification by the Court in the future.

12 **Part Two: Use of Confidential Materials in Court**

13 The following provisions govern the treatment of Confidential Information or Highly
14 Confidential Information used at trial or submitted as a basis for adjudication of matters other
15 than discovery motions or proceedings. These provisions are subject to Rules 2.550, 2.551, 2.580,
16 2.585, 8.600, and 8.400 of the California Rules of Court and must be construed in light of those
17 Rules.

18 19. A party that files with the Court or seeks to use at trial materials designated as
19 Confidential Information or Highly Confidential Information and who seeks to have the record
20 containing such information sealed shall submit to the Court a motion or an application to seal,
21 pursuant to California Rule of Court 2.551.

22 20. A party that files with the Court or seeks to use at trial materials designated as
23 Confidential Information or Highly Confidential Information by anyone other than itself and who
24 does not seek to have the record containing such information sealed shall comply with either of
25 the following requirements:

- 26 (a) At least ten (10) business days prior to the filing or use of the Confidential
27 Information or Highly Confidential Information, the submitting party shall
28 give notice to all other parties and to any non-party that designated the

1 materials as Confidential Information or Highly Confidential Information
2 pursuant to this Order, of the submitting party's intention to file or use the
3 Confidential Information or Highly Confidential Information, including
4 specific identification of the Confidential Information or Highly
5 Confidential Information. Any affected party or non-party may then file a
6 motion to seal pursuant to California Rule of Court 2.551(b) or

7 (b) At the time of filing or desiring to use the Confidential Information or
8 Highly Confidential Information, the submitting party shall submit the
9 materials pursuant to the lodging under seal provision of California Rule of
10 Court 2.551(d). Any affected party or non-party may then file a motion to
11 seal pursuant to the California Rule of Court 2.551(b) within ten (10)
12 business days after such lodging. Documents lodged pursuant to California
13 Rule of Court 2.551(d) shall bear a legend stating that such materials shall
14 be unsealed upon expiration of ten (10) business days, absent the filing of a
15 motion to seal pursuant to Rule 2.551(b) or Court order.

16 21. In connection with a request to have materials sealed pursuant to Paragraph 12 or
17 Paragraph 13, the requesting party's declaration pursuant to California Rule of Court 2.551(b)(1)
18 shall contain sufficient particularity with respect to the particular Confidential Information or
19 Highly Confidential Information and the basis for sealing to enable the Court to make the findings
20 required by California Rule of Court 2.550(d).

21 **IT IS SO STIPULATED.**

22
23 DATED: _____, 2016

24 **PERKINS COLE LLP**

25 By: _____
26 Julie E. Schwartz
27 *Attorney for Defendant*
28 *Facebook, Inc.*

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DATED: _____, 2016

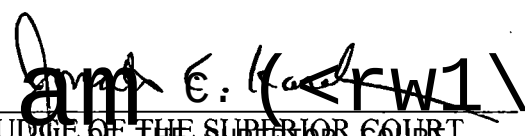
BIRNBAUM & GODKIN, LLP

By: _____
David Godkin

Attorneys for Plaintiff
SIX4THREE, LLC

IT IS SO ORDERED.

DATED: 10/31/17, 2016


JUDGE OF THE SUPERIOR COURT
JURATE

CERTIFICATION

I hereby certify my understanding that Confidential Information or Highly Confidential Information is being provided to me pursuant to the terms and restrictions of the Stipulation and Protective Order Regarding Confidential Information filed on _____, 2016, in *Six4Three LLC v. Facebook, Inc.* San Mateo County Superior Court Case No. CIV533328 ("Order"). I have been given a copy of that Order and read it.

I agree to be bound by the Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I will not reveal the Confidential Information or Highly Confidential Information to anyone, except as allowed by the Order. I will maintain all such Confidential Information or Highly Confidential Information, including copies, notes, or other transcriptions made therefrom, in a secure manner to prevent unauthorized access to it. No later than thirty (30) days after the conclusion of this action, I will return the Confidential Information or Highly Confidential Information, including copies, notes, or other transcriptions made therefrom, to the counsel who provided me with the Confidential Information or Highly Confidential Information. I hereby consent to the jurisdiction of the San Mateo County Superior Court for the purpose of enforcing the Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ located at the address of _____ as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

I declare under penalty of perjury that the foregoing is true and correct and that this certificate is executed this _____ day of _____, 2016, at _____.

By: _____

Address: _____

Phone: _____

EXHIBIT 8

November 21, 2018

BY EMAIL (damian.collins.mp@parliament.uk)

Mr. Damian Collins MP
Chair, Digital, Culture, Media and Sports Committee
House of Commons
London SW14 0AA

*Re Orders for Documents Served on Six4Three's Principal, Ted Kramer, on
November 19, 2018 and November 21, 2018*

Dear Mr. Collins:

Following up on my letter sent yesterday regarding this matter, I have attached for your information an Order for Briefing and Staying Submission of Unredacted Copies of Sealed Documents entered by the San Mateo Superior Court yesterday evening. As we have previously informed you, Mr. Kramer is bound by the Protective Order and has no choice but to comply with it. In addition, the attached Order further prevents Mr. Kramer from transmitting, releasing or submitting unredacted copies of Plaintiff's opposition to either Facebook's Special Motion to Strike or Individual Defendants' Special Motion to Strike until further order of the Court, and provides that failure to comply will be considered an act of contempt.

Accordingly, the various orders for documents that your committee has served on Mr. Kramer on November 19 and this morning have placed Mr. Kramer in an impossible position. He would subject himself to contempt sanctions in San Mateo Superior Court if he complies with your orders, and you have reported his non-compliance with your Committee's orders to the House of Commons and requested that it take action against him.

Per the attached Order, the San Mateo Superior Court has asked the parties to the Six4Three litigation to brief a number of issues, including what authority your Committee has to overrule the Superior Court's orders without first seeking relief from the Superior Court, what is the legal effect under United Kingdom law of the DCMS letter to Mr. Kramer, is the DCMS letter different from a summons, what are the procedures for Mr. Kramer, who is visiting the United Kingdom on business, to respond or object to the DCMS letter, and what are the contempt procedures for DCMS for non-compliance by Mr. Kramer. Insofar as these are questions of United Kingdom law and concern your committee, Six4Three's attorneys in the United States are not qualified to address them, and Six4Three is not able to engage United Kingdom counsel to assist.

Mr. Damian Collins MP
November 21, 2018
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In addition, as I indicated yesterday, the documents you seek include internal Facebook records, and I suggest that you seek to obtain them directly from Facebook. In the attached order, the Superior Court has also asked whether Facebook is subject to the jurisdiction of your committee, whether DCMS or another committee has served a similar demand for unredacted copies of sealed documents on Facebook and if so, how has Facebook responded.

As the answers to the questions raised by the Superior Court implicate your committee, I urge you or someone on your behalf to provide answers to the Superior Court's questions directly to the Superior Court by Monday, November 26, 2018 at 12 p.m. Pacific Time.

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David S. Godkin

DSG:cam

cc: Ms. Chloe Challenger (By email to challenders@parliament.uk)
Culture, Media & Sport Committee (By email to CMSCOM@parliament.uk)
Joshua Lerner, Esq. (By email)
Sonal Mehta, Esq. (By email)
Catherine Kim, Esq. (By email)
Service Six4Three (By email)
Stuart G. Gross, Esq. (By email)
James E. Kruzer, Esq. (By email)